

## **REMARKS/ARGUMENTS**

Applicant notes that the Examiner's previous objections to claims 26 and 45 are withdrawn as moot. Applicant further notes that the Examiner's earlier Section 102(e) rejection has been withdrawn, as the Examiner has not repeated same and instead has rejected the claims only on Section 103(a) and Section 112 grounds.

### **1. Summary of the Office Action Dated May 17, 2005:**

In the Office Action dated January 27, 2006, the Examiner rejected pending claims 25, 27-44, and 46-48 under 35 U.S.C. § 112 as non-enabling for "private security services" and/or "private security officer."

The Examiner also rejected claims 25-27, 29, 34-41, and 43-46 as obvious under 35 U.S.C. § 103(a) based on the combination of Frankel et al. U.S. Patent No. 6,449,611, and Gioia, U.S. Patent No. 6,067,007. Further, the Examiner rejected claims 28 and 47 as obvious under 35 U.S.C. § 103(a) based on the combination of Frankel, Gioia, and Brown, U.S. Patent No. 6,173,284. The Examiner rejected claims 30-32, 42, and 48 as obvious under 35 U.S.C. § 103(a) based on the combination of Frankel, Gioia, and Martin, U.S. Patent No. 4,847,791. Finally, the Examiner rejected claim 33 as obvious under Section 103(a) based on the combination of Frankel, Gioia, Martin, Brown and Nickerson et al., U.S. published patent application No. 2003/0115023.

For the reasons detailed below, Applicants believe that the claims are enabling and patentably distinct from the references cited and therefore request allowance of the pending claims.

**2. Response to the Section 112 Rejection Regarding “Private” Security Services:**

The Examiner noted that the specification is enabling with respect to security services and security officers. However, the Examiner concluded that the specification is not enabling with respect to “private security services” or “private security officers.” Applicants respectfully disagree.

Applicants first note that only independent claim 25, and dependent claims 28, 29, 33 & 34, as now amended recite “private security services” or “private security officers.” References to “private security services” and “private security officers” have been deleted from independent claims 36 and 44, and from dependent claims 39 & 41. It is respectfully submitted that the rejection on Section 112 grounds is therefore moot as to pending claims 36-44 and 47-48.

Applicants respectfully submit that the specification enables those of ordinary skill to practice the claimed invention. The specification describes the field of the invention as “methods and apparatus for providing and obtaining security services.” See U.S. Published Patent Application No. 2003/0084033, paragraph 2. Those of ordinary skill will easily understand the terms “private security services” and “private security officers” in light of the detailed description of the invention.

The word “private” is defined as follows:

**pri-vate** (prī-vit) *adj.* [ME. *pryvat* < L. *privatus*, belonging to oneself, not to the state < *privare*, to separate, edprive < *privus*, separate, peculiare, prob. akin to OL, *pri*: see PRIME] 1. of, belong to, or concerning a particular person or group; not common or general [*private* property, a *private* joke] 2. not open to, intended for, or controlled by the public [*a private* school] 3. for an individual person [*a private* room in a hospital] 4. not holding public office [*a private* citizen] 5. away from public view; secluded [*a private* dining room] 6. not publicly or generally known; secret; confidential [*a private* matter] 7. carried out or done on a individual basis [*private* medical practice] 8. engaged in work independent of institutions, organizations, agencies, etc. [*private* detective, *private* tutor] -**n.** 1. [*pl.*] the genitals: also **private parts** 2. an enlisted man of either of the two

lowest ranks in the U.S. Army or of the lowest rank in the U.S. Marine Corps – **in private** privately or secretly; not publicly - **pri-vate-ly adv.**

Webster's NewWorld Dictionary, p. 1131 (2d ed. 1984).

This definition draws a clear distinction between things which are "public" and those which are "private." The definition even uses a "private detective" as an example. Those skilled in the art will easily understand and appreciate that "private" security services are those provided by private companies, not public institutions such as law enforcement agencies, and that "private" security officers are those working for private companies, not public institutions.

The specification itself makes this ordinary meaning clear. For example, the specification defines a "client" as follows:

[0044] Client. A "client" of security services can be a separate person or company with whom the security service provider contract. A "client" can also be a division, department, or facility of the same company providing such security services. It will be understood that a "client" may have numerous properties or facilities for which security services are provided. In addition, it will be understood that a "client" may be a corporation or other legal entity, or a division or unit of a corporation or other legal entity, and there may be one or any number of individuals employed by or otherwise representing that entity and who act for the client.

Application No. 2003/0084033, paragraph 44. This definition of a "client" makes it clear that the security services involved are "private" security services, as opposed to the types of services provided to members of the general public by law enforcement agencies. Similarly, those of ordinary skill will appreciate that the security officers involved in providing the security services to a "client" are "private" employees and cannot be employees of law enforcement agencies. Nothing in the specification anywhere suggests that the security services involved are provided by any law enforcement agency or government institution.

Those skilled in the art will appreciate that various laws regulate the provision of private security services. Among other things, private security officers typically must register and/or

obtain a license from a state agency. Attached hereto as Exhibit 1 are copies of relevant excerpts of the Texas Occupations Code that relate to the licensing of private security officers in Texas. Similarly, the website for the California Bureau of Security and Investigation Services notes that “[r]egulation of the private security industry began in 1915, when California enacted a licensing requirement for private investigators.” Attached hereto as Exhibit 2 is a printout from this website, with the URL of <<http://www.dca.ca.gov/bsis/history.htm>>. Those skilled in the art will be familiar with the legal regulations requiring licensing of private security service providers.

Applicants further note that the Office Action does not explain the “factors, reasons, and evidence that lead the examiner to conclude that the specification fails to teach how to make and use the claimed invention without undue experimentation, or that the scope of any enablement provided to one skilled in the art is not commensurate with the scope of protection sought by the claims.” *See* Manual of Patent Examining Procedure §2164.04.

In view of the foregoing, Applicants respectfully submit that the specification is indeed enabling with respect to the terms “private security services” and “private security officers.” Applicants therefore respectfully request withdrawal of this ground for rejection.

**3. Summaries of the Cited References:**

**a. Frankel**

Frankel discloses a “business model” involving the use of an Internet web site for assisting in the location of missing goods or persons. The entire point of Frankel is to provide a system to allow someone to post information about a lost or missing item or person on a web site in order to provide widespread dissemination of information regarding the missing item or person. *See* Frankel, col. 1, lines 10-18. Frankel fails to ever mention the use of such a system

by private security guards, fails to mention how such a site could be used to provide security services for a client at a client location, and fails to mention how such a site could be used to provide data relating to security services to a client of such security services. Indeed, the nature of private security services is such that much of the information to be provided to a client of such services by a security officer is to be kept confidential and provided only to the applicable client.

As noted in the Specification of the pending application, security services usually involve uniformed security offices who patrol a client's premises and monitor a client's premises. *See* U.S. Published Patent Application No. 2003/0084033, paragraphs 0002-0005. The Specification further notes the types of security information included in a daily activity report, including "a log of the various incidents observed by or reported to the officer, such as assaults, burglaries, thefts, injuries, lost children, vandalism, complaints, and the like, . . . ." *Id.*, paragraph 0062. Such security services are nowhere disclosed or discussed in Frankel.

The Examiner pointed out that Frankel refers to law enforcement agencies, such as at col. 11, lines 6-15. However, Frankel simply notes that a web site for posting information on missing articles and persons preferably would allow law enforcement agencies to enter police reports, allowing the missing or stolen asset information to be extracted from the police report and automatically posted to the web site. *Id.*

In sharp contrast to Frankel, the present invention involves the provision of information regarding security services at a client location to a web site accessible over the Internet by a client of such security services. Contrary to the Examiner's conclusions, Frankel fails to disclose providing a security officer at a client location. Frankel only notes that a law enforcement office may enter police reports remotely. Moreover, Frankel does not teach the entry of security data regarding security services for a client at a client location. Nothing in Frankel teaches that a

police officer provides security services to a client at a client location and then submits a report of such security services via the Internet to a database.

**b. Gioia**

Gioia discloses a method and apparatus for assisting in the location and possible recovery of a stolen car. *See* U.S. Patent No. 6,067,077, Abstract & col. 1, line 51 to col. 2, line 8. In connection with detecting that a vehicle has been stolen, Gioia discloses the use of a position detector using global positioning systems and sending information regarding the vehicle's position to a "monitoring station", which Gioia notes can be "the local police department, a security service firm, or the vehicle owner's residence." *Id.*, at col. 2, lines 1-3. Thus, Gioia expressly distinguishes between a law enforcement agency and a security service provider. Such a distinction precludes the Examiner's overly broad reading of Frankel to conclude that Frankel's reference to submission of police reports via the Internet somehow constitutes providing security data by a security officer providing security services at a client location, as described in the pending claims.

Apart from noting that a stolen vehicle's location can be provided to a security service firm, Gioia fails to teach or disclose anything at all about providing security services at a client location and providing security data regarding a security related event at a client location to a database over the Internet, or allowing a client to retrieve information regarding such security services from the database via the Internet.

**c. Martin**

Martin discloses a timekeeping system "especially useful in a shop having a number of mechanic employees and having a number of different types of machines operated by those employees." Martin, col. 1, lines 11-14. Martin is directed towards a computer with multiple

workstations; the employees use the work stations to record start and stop times for various jobs or operations, so that the computer can keep track of the time required for various jobs in order to determine whether a job is profitable. *See* Martin, col. 1, lines 54-68. Martin fails to suggest or provide any motivation for use of such a system in connection with security services provided at a client location, let alone requiring that a security officer submit a particular type of report before the security officer can log off a computer or “clock out.” Moreover, Martin fails to teach or disclose the provision of any clock-in or clock-out information to a database via the Internet.

**d. Brown**

Brown teaches a system for monitoring police records for predefined crime profiles and for notifying a police officer, or group of police officers, when a match occurs. Brown, col. 2, lines 46-49. Unlike the claims of the present invention, Brown teaches a limited system that is only available to police officers. For example, in Figure 1 of Brown, “the system 10 comprises a user interface module 12 that receives query information from a police officer that defines a search query for a crime profile.” Brown, col. 5, lines 44-46. A database procedure performs a search, and if a match occurs, a notification message is sent to the police officer or a group of police officers. Brown, col. 5, lines 49-57. The purpose of the system described in Brown is to “shift the burden of identification of crime-related problems from the police officer to a computer-based system” Brown, col. 5, lines 49-57.

Unlike Brown, the independent claims of the present invention include receiving or providing data via the Internet relating to security services at a client location from at least one security officer providing security services at a client location, with such security data relating to security related events occurring at the client location. The database of the subject claims

comprises such security data and can be made available, via the Internet, to at least one client that enters an authorization code to access at least a portion of the information.

Brown does not teach or suggest these features. Instead, Brown is directed to “an improved system of monitoring police records.” Brown, col. 2, lines 40-41. A close reading of Brown also shows that it fails to teach the use of daily activity reports regarding security services at a client location. The Examiner’s reference to Brown shows only that, according to Brown, a police officer may request that a search of a database be run on a daily basis. Brown fails to teach or suggest that the database contains daily activity reports, let alone such daily activity reports regarding security services provided at a client location.

**e. Nickerson**

Nickerson is directed to soliciting user feedback regarding the user’s reaction to web site pages. Nickerson teaches that an icon soliciting user feedback can be provided without requiring the user to go to another web page. A close reading of Nickerson shows, however, that it fails to teach requiring the user to provide feedback before the user can move to another web page, let alone requiring the submission of a report by a security officer before the office can “clock out.”

**4. The Section 103(a) Rejections:**

**a. Overview of the Invention:**

Conventional approaches to providing security services utilize paper driven processes. Traditionally, for example, a security officer providing security services at a client location and prepares a written daily report summarizing the services and events of a given day. This conventional approach to providing security services delays a client’s access to such reports, and makes it difficult and costly for the client to maintain copies of the reports for later use. Moreover, analysis of the information is limited when presented in written form. The claims of



the present invention recite electronic, Internet driven processes for providing improved security services.

As amended, independent claim 25 recites the provision of security services “at the client location” and security data relating to at least one security related event occurring “at the client location.” Similarly, claim 36 recites a database of information relating to security data provided by a security officer providing security services at a client location, with the security data corresponding to a security related event at a client location. Finally, claim 44 recites the receipt of security data from a plurality of security officer computers at a plurality locations, and a database comprising information relating to security services provided for a plurality of clients, with security data corresponding to a security related event occurring at one of the client locations. Thus, each of the pending independent claims 25, 36, and 44 recite security data, provided by a security officer providing security services at a client location. The specification’s definition of “client” is relevant, as it demonstrates that none of the cited references, alone or in any combination, teaches, suggests or discloses all of the limitations of the pending independent claims.

Nothing in any of the cited references teaches, suggests or discloses the provision of any security data relating to a security related event at a client location by a security officer providing security services at a client location, via the Internet. Similarly, none of the cited references teach, suggest or disclose allowing a client of such security services to obtain such security data via the Internet. Applicant submits that the claims are patentably distinct from each of the cited references and from any combination of any or all of such cited references.

**b. General Principles Applicable to the Section 103(a) Rejections:**

To establish a prima facie case of obviousness, three criteria must be shown. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the applicant's disclosure. *See, e.g., In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); Manual of Patent Examining Procedure § 706.02(j) & 2143. If the proposed modification would render the prior invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *See, e.g., In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); Manual of Patent Examining Procedure § 2143.01. Moreover, a prior art reference must be considered in its entirety, including those portions that would lead away from the claimed invention. *See, e.g., W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Circ. 1983); Manual of Patent Examining Procedure § 2141.02.

**c. Claims 25-27, 29, 34-41 & 43-46 and the Combination of Frankel and Gioia:**

Nothing in Gioia or Frankel suggests or teaches combining the two references. Frankel is intended to assist those looking for lost items or persons. Gioia is directed to a system for allowing the location and recovery of stolen vehicles. Applicants thus submit that the combination of Frankel and Gioia is improper. Gioia expressly distinguishes between a law enforcement agency and a security service provider. Thus, Gioia teaches away from the Examiner's assertion that Frankel's reference to allowing a police department to post police

reports via the Internet can be considered as security services for a “client,” let alone security services provided at a client location. As noted above, the specification’s definition of a “client” precludes the Examiner’s overly broad reading of Frankel, as does the express teaching of Gioia.

Neither Gioia nor Frankel is directed to providing security services at a client location, to providing information regarding such security services at a client location to a database via the Internet, or to providing security data relating to a security related event at a client location via the Internet. Even in combination, Gioia and Frankel thus fail to teach all of the elements of the independent claims 25, 36, and 44. Consequently, reconsideration of the rejection and allowance of the claims is requested.

**d. Claims 28 & 47 and the Combination of Frankel, Gioia, and Brown:**

As noted above, Frankel fails to teach or suggest its application to security services at a client location. Moreover, nothing in either Frankel, Gioia, or Martin suggests or provides any motivation for their combination, let alone a combination of all three. Applicants submit that this three-reference combination is also improper.

Even in combination, Frankel, Gioia, and Brown fail to teach all of the elements of the pending claims. Even in combination, Frankel, Gioia, and Brown fail to disclose providing information to or from a database comprising security data regarding a security related event at a client location from a security officer providing security services at a client location.

Because the combination of these three references fails to include the limitations of independent claims 25, 36, and 44, all of the pending claims are patentably distinct. Consequently, reconsideration of the rejection and allowance of the claims is requested.

**e. Claims 30-32, 42, and 48 and the Combination of Frankel, Gioia, and Martin:**

Applicants fail to understand the Examiner's reasons for concluding that the combination of Frankel, Gioia, and Martin is appropriate. As with the other cited combinations, nothing in any these three references suggests or provides any motivation for any such combination, and each of the three references deals with separate and unrelated fields. But even assuming such a combination is proper (which Applicants dispute), the combination of such references still fails to disclose all of the elements of the subject claims.

Applicants note that nothing in Martin teaches, discloses or suggests that any clock-in or clock-out information is to be provided to a database via the Internet. A close reading of Martin shows that Martin fails to disclose, teach or suggest anything about the use of clock-in or clock-out information regarding security officers, let alone security officers providing security services at a client location. Thus, Applicants respectfully disagree with the Examiner's assertion that the combination of Frankel, Gioia and Martin discloses having a security officer log into a website to provide clock-in information and log out of a website to provide clock-out information.

Moreover, nothing in the combination of Frankel, Gioia, and Martin suggests, discloses or teaches the use of a database which can receive and provide information via the Internet, wherein the information comprises security data regarding a security related event at a client location that is provided to the database via the Internet from a security officer providing security services for a client at a client location. As noted above, the specification expressly defines a "client" in a manner that clearly precludes treating a law enforcement agency as a provider of security services to a client at a client location.

Even in combination, these three references fail to teach, disclose or suggest all of the limitations of independent claims 25, 36, and 44. For that reason alone, Applicants submit that

all of the pending claims are patentably distinct and allowable over the combination of Frankel, Gioia, and Martin. Accordingly, Applicants respectfully request reconsideration and allowance of all of the pending claims.

**f. Claim 33 and the Combination of Frankel, Gioia, Martin, Brown and Nickerson:**

Even assuming that the combination of the five references Frankel, Gioia, Martin, Brown, and Nickerson is somehow appropriate (which Applicants dispute), the combination of these five references still fails to teach all of the elements of the pending claims. Even this combination of five references fails to teach, suggest, or disclose providing information via the Internet to an from a database comprising security data relating to a security related event at a client location that is provided by a security officer providing security services at a client location.

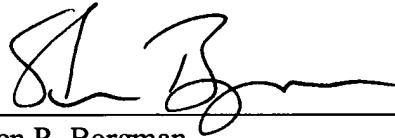
Because even this combination of five references fails to teach, disclose or suggest all of the limitations of independent claims 25, 36, and 44, Applicants submit that all of the pending claims are allowable. Consequently, reconsideration of the rejection and allowance of the claims is requested.

**CONCLUSION**

It is believed that the claims as amended herein patentably distinguish over the references cited. Applicants believe that this paper is fully responsive to all outstanding issues raised by the Office Action mailed January 27, 2006. Applicants therefore respectfully request allowance of the pending claims. The Office is invited to contact the undersigned attorney at (713) 758-2002 with any questions, comments, or suggestions relating to the referenced patent application.

Respectfully submitted,

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Date: April 27, 2006

**EXHIBIT 1**

**VERNON'S TEXAS CODES ANNOTAED – OCCUPATIONS CODE**

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Vernon's

TEXAS CODES  
ANNOTATED

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OCCUPATIONS CODE

Sections 1701.001 to 2050

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## SECURITY Title 10

### CHAPTER 1702. PRIVATE SECURITY

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## PRIVATE SECURITY

Ch. 1702

### Section

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- 1702.303. Renewal of Expired License by Out-of-State Practitioner.
- 1702.304. Staggered Renewal; Proration of License Fee.
- 1702.305. Effect of License Renewal on Disciplinary Action.
- 1702.306. Effect of Suspension on License Renewal Requirements.
- 1702.307. Registration Renewal.
- 1702.308. Continuing Education.
- 1702.309. Security Officer Commission Renewal.  
[Sections 1702.310 to 1702.320 reserved for expansion]

#### SUBCHAPTER N. EXCEPTIONS

- 1702.321. Government Employees.
- 1702.322. Law Enforcement Personnel.
- 1702.323. Security Department of Private Business.
- 1702.324. Certain Occupations.
- 1702.325. Common Carriers.
- 1702.326. Medical Alert Services.
- 1702.327. Nonprofit and Civic Organizations.
- 1702.328. Security Systems Sales and Installation.
- 1702.329. Fire Alarm and Detection Sales and Installation.
- 1702.330. Security Personnel of Private Institution of Higher Education.  
[Sections 1702.331 to 1702.360 reserved for expansion]

#### SUBCHAPTER O. PROHIBITED PRACTICES AND GROUNDS FOR DENIAL AND DISCIPLINARY ACTION

- 1702.361. Denial and Disciplinary Powers of Commission; Grounds.
- 1702.3615. Revocation or Refusal for Certain Offenses.
- 1702.362. Failure to File Required Notice.
- 1702.363. Application of Administrative Procedure Act.
- 1702.364. Summary Suspension.
- 1702.365. Abduction of Child.
- 1702.366. Repealed.
- 1702.367. Complaint Investigation; Subpoena; Witness.

**Section**

- 1702.368. Notification of Conviction for Certain Offenses.
- 1702.369. No Reinstatement After Revocation.
- 1702.370. Effect of Suspension; Monitoring of Existing Alarm Contracts.
- 1702.3705. Prohibition Against Certain Political Subdivisions Acting as Alarm Systems Company.
- 1702.371. Conviction of Certain Crimes.

[Sections 1702.372 to 1702.380 reserved for expansion]

**SUBCHAPTER P. PENALTIES AND ENFORCEMENT PROVISIONS**

- 1702.381. Civil Penalty.
- 1702.382. Injunction.
- 1702.383. Action for Civil Penalty or Injunction.
- 1702.384. Falsification of Certain Documents; Offense.
- 1702.385. Neglect by Guard Dog Company; Offense.
- 1702.386. Unauthorized Employment; Offense.
- 1702.3863. Unauthorized Contract With Bail Bond Surety; Offense.
- 1702.3867. Execution of Capias or Arrest Warrant; Offense.
- 1702.387. Failure to Surrender Certain Documents; Offense.
- 1702.3875. Impersonating Security Officer; Offense.
- 1702.388. Violation of Chapter; Offense.
- 1702.389. Venue.

**SUBCHAPTER Q. ADMINISTRATIVE PENALTY**

- 1702.401. Imposition of Penalty.
- 1702.402. Amount of Penalty.
- 1702.403. Report and Notice of Violation and Penalty.
- 1702.404. Penalty to be Paid or Hearing Requested.
- 1702.405. Hearing.
- 1702.406. Decision by Commission.
- 1702.407. Options Following Decision: Pay or Appeal.
- 1702.408. Stay of Enforcement of Penalty.
- 1702.409. Collection of Penalty.
- 1702.410. Decision by Court.
- 1702.411. Remittance of Penalty and Interest.
- 1702.412. Release of Bond.
- 1702.413. Administrative Procedure.

**Westlaw Electronic Research**

See Westlaw Electronic Research Guide following the Preface.

**SUBCHAPTER A. GENERAL PROVISIONS**

**§ 1702.001. Short Title**

This chapter may be cited as the Private Security Act.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.551(b), eff. Sept. 1, 2001.

## CEMENT & SECURITY Title 10

### Disciplinary Actions

Public through a toll-free accessible medium determining a disciplinary action relating to a person regulated by

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## INVESTIGATIONS CONTRACTORS

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### Historical and Statutory Notes

#### Prior Laws:

Acts 1969, 61st Leg., p. 1807, ch. 610.  
Acts 1971, 62nd Leg., p. 2835, ch. 929, §§ 1 to 23.  
Acts 1973, 63rd Leg., p. 280, ch. 130, § 1.

Acts 1973, 63rd Leg., p. 627, ch. 266, § 17.  
Acts 1975, 64th Leg., p. 788, ch. 303, § 1.  
Acts 1975, 64th Leg., p. 1312, ch. 494, § 1.  
Acts 1977, 65th Leg., p. 1873, ch. 746, § 5.  
Vernon's Ann.Civ.St. art. 4413(29bb), § 13(a).

### Cross References

Continuing education, see V.T.C.A., Occupations Code § 1702.308.  
Expiration, see V.T.C.A., Occupations Code § 1702.301.  
License renewal, see V.T.C.A., Occupations Code § 1702.302.  
Revocation or refusal for certain offenses, see V.T.C.A., Occupations Code § 1702.3615.

### Library References

Detectives ◊ 3.  
Westlaw Topic No. 125.  
C.J.S. Detectives §§ 1, 6 to 8.

### Research References

#### Treatises and Practice Aids

Texas Practice Guide: Employment Practice  
§ 7:144, --Guard Company Must be Licensed.

### Notes of Decisions

In general 1  
Negligence 2

#### 1. In general

This article [this chapter], prohibiting unlicensed persons from acting as private investigators, is not intended to inhibit private citizens from cooperating with public and private law enforcement officials. U. S. v. Patterson, C.A.5 (Tex.)1976, 528 F.2d 1037, rehearing denied 534 F.2d 1113, certiorari denied 97 S.Ct. 361, 429 U.S. 942, 50 L.Ed.2d 313. Detectives ◊ 3

In view of evidence showing that informant cooperated with telephone company security supervisor by informing him about defendant's desire to sell "blue boxes," a device used for purpose of defrauding telephone company, and that the informant rode to place of demonstra-

tion with defendant, informant was not violating this article, prohibiting unlicensed persons from acting as private investigators, since record revealed no investigatory action by informant. U. S. v. Patterson, C.A.5 (Tex.)1976, 528 F.2d 1037, rehearing denied 534 F.2d 1113, certiorari denied 97 S.Ct. 361, 429 U.S. 942, 50 L.Ed.2d 313. Detectives ◊ 3

#### 2. Negligence

Plaintiff could not recover on negligence per se theory from private investigator hired to investigate her, or from his employer, on ground that neither was licensed to conduct investigations in Texas, where failure to acquire license was not proximate cause of any damages or injuries to plaintiff. Hudson, v. Winn (App. 1 Dist. 1993) 859 S.W.2d 504, rehearing denied, writ denied. Detectives ◊ 4

## § 1702.102. Security Services Contractor License Required; Scope of License

(a) Unless the person holds a license as a security services contractor, a person may not:

(1) act as an alarm systems company, armored car company, courier company, guard company, or guard dog company;

§ 1702.102

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Title 10

PRIVATE SECURITY  
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- (2) offer to perform the services of a company in Subdivision (1); or
- (3) engage in business activity for which a license is required under this chapter.
- (b) A person licensed only as a security services contractor may not conduct an investigation other than an investigation incidental to the loss, misappropriation, or concealment of property that the person has been engaged to protect.
- Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

Revisor's Note

- (1) Section 13(a), V.A.C.S. Article 4413(29bb), states that certain conduct is "punishable as provided in Section 44 of this Act." The revised law omits the quoted reference for the reason stated in the revisor's note under Section 1702.101.
- (2) Section 16(c), V.A.C.S. Article 4413(29bb), refers to "theft, . . . embezzlement, [and] misappropriation" of property. The revised law omits "theft" and "embezzlement" because the terms are included within the meaning of "misappropriation."
- (3) Section 16(c), V.A.C.S. Article 4413(29bb), refers to a person who is "hired or engaged." The revised law omits "hired" because the term is included within the meaning of "engaged."

Historical and Statutory Notes

Prior Laws:

Acts 1969, 61st Leg., p. 1807, ch. 610.  
Acts 1971, 62nd Leg., p. 2835, ch. 929, §§ 1 to 23.  
Acts 1973, 63rd Leg., p. 280, ch. 130, § 1.  
Acts 1973, 63rd Leg., p. 627, ch. 266, § 17.

Acts 1975, 64th Leg., p. 788, ch. 303, § 1.  
Acts 1975, 64th Leg., p. 1312, ch. 494, § 1.  
Acts 1977, 65th Leg., p. 1873, ch. 746, §§ 5, 9.  
Vernon's Ann.Civ.St. art. 4413(29bb), §§ 2(9), 13(a), 16(c).

Library References

Detectives Ⓒ3.  
Westlaw Topic No. 125.  
C.J.S. Detectives §§ 1, 6 to 8.

§ 1702.1025. Electronic Access Control Device Company License Required; Scope of License.

- (a) Unless the person holds a license as an electronic access control device company, a person may not:
- (1) act as an electronic access control device company;
- (2) offer to perform the services of an electronic access control device company; or
- (3) engage in business activity for which a license is required under this chapter.
- (b) A person licensed as an electronic access control device company may not install alarm systems unless otherwise licensed or registered to install alarm systems under this chapter.
- Added by Acts 2003, 78th Leg., ch. 936, § 3, eff. Jan. 1, 2004.

Section 15 of Acts 1999 provides:

"(a) Not later than January 1, 2000, the Commission on Private Security shall promulgate rules necessary to administer the Act made by this Act to Chapter 1702.

"(b) Notwithstanding Section 1702.2225, Occupation

Detectives Ⓒ3.  
Westlaw Topic No. 125.  
C.J.S. Detectives §§ 1, 6 to 8.

Encyclopedias

TX Jur. 3d Business and Commerce  
§ 4, Businesses and Occupations  
License.

§ 1702.103. Class of License

(a) The license shall be:

(1) Class A: for investigations and security services;

(2) Class B: for security services;

(3) Class C: for investigations and security services;

(4) Class D: for investigations of an electronic access control device company.

(b) A Class A, B, C, or D license holder may perform a service for which the license holder is not engaged in an investigation, but the commission shall not authorize the holder to perform a service not authorized to perform as indicated on the license.

(c) A license is issued by the commission.

(d) The commission may terminate a license if the holder fails to comply with the rules promulgated by the commission.

Acts 1999, 76th Leg., ch. 1420, § 14.587, eff. September 1, 2003.

**§ 1702.107**

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**Library References**

Detectives Ⓒ3.  
Westlaw Topic No. 125.  
C.J.S. Detectives §§ 1, 6 to 8.

**Notes of Decisions**

**In general 1**

**1. In general**

Statute requires a license for those services which transport documents, papers, etc., "un-

der armed guard," that is, with the use of a deadly weapon. An unarmed courier is not required to obtain a license. Op.Atty.Gen.1974, No. H-457.

**§ 1702.108. Guard Company**

A person acts as a guard company for the purposes of this chapter if the person employs an individual described by Section 1702.323(d) or engages in the business of or undertakes to provide a private watchman, guard, or street patrol service on a contractual basis for another person to:

- (1) prevent entry, larceny, vandalism, abuse, fire, or trespass on private property;
- (2) prevent, observe, or detect unauthorized activity on private property;
- (3) control, regulate, or direct the movement of the public, whether by vehicle or otherwise, only to the extent and for the time directly and specifically required to ensure the protection of property;
- (4) protect an individual from bodily harm including through the use of a personal protection officer; or
- (5) perform a function similar to a function listed in this section.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.588, eff. Sept. 1, 2001.

**Revisor's Note**

(1) Section 2(4), V.A.C.S. Article 4413(29bb), refers to "intrusion, entry, . . . or trespass." The revised law omits "intrusion" because the term is included within the meaning of "trespass."

(2) Section 2(4), V.A.C.S. Article 4413(29bb), refers to "the flow or movements" of the public. The revised law omits "flow" because the term is included within the meaning of "movements."

**Historical and Statutory Notes**

**Prior Laws:**

Acts 1969, 61st Leg., p. 1807, ch. 610.  
Acts 1971, 62nd Leg., p. 2835, ch. 929, §§ 1 to 23.  
Acts 1973, 63rd Leg., p. 280, ch. 130, § 1.

Acts 1973, 63rd Leg., p. 627, ch. 266, § 17.  
Acts 1975, 64th Leg., p. 788, ch. 303, § 1.  
Acts 1975, 64th Leg., p. 1312, ch. 494, § 1.  
Acts 1995, 74th Leg., ch. 754, § 1.  
Acts 1995, 74th Leg., ch. 790, § 1.  
Vernon's Ann.Civ.St. art. 4413(29bb) § 2(4).



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**§ 1702.182. Security Department of Private Business**

A security department acts as the security department of a private business if it:

- (1) has as its general purpose the protection and security of its own property and grounds; and
- (2) does not offer or provide security services to another person.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999.

**Historical and Statutory Notes**

**Prior Laws:**

Acts 1969, 61st Leg., p. 1807, ch. 610.  
Acts 1971, 62nd Leg., p. 2835, ch. 929, §§ 1 to 23.

Acts 1973, 63rd Leg., p. 280, ch. 130, § 1.  
Acts 1973, 63rd Leg., p. 627, ch. 266, § 17.  
Acts 1975, 64th Leg., p. 788, ch. 303, § 1.  
Acts 1975, 64th Leg., p. 1312, ch. 494, § 1.  
Vernon's Ann.Civ.St. art. 4413(29bb), § 2(10).

**Library References**

Detectives ☞ 3.  
Westlaw Topic No. 125.  
C.J.S. Detectives §§ 1, 6 to 8.

**§ 1702.183. Application for Letter of Authority**

A security department of a private business or of a political subdivision that applies for a security officer commission for an individual employed by the department must submit an application to the commission for a letter of authority on a form provided by the commission.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.621, eff. Sept. 1, 2001.

**Historical and Statutory Notes**

**Prior Laws:**

Acts 1969, 61st Leg., p. 1807, ch. 610.  
Acts 1971, 62nd Leg., p. 2835, ch. 929, §§ 1 to 23.  
Acts 1973, 63rd Leg., p. 280, ch. 130, § 1.  
Acts 1973, 63rd Leg., p. 627, ch. 266, § 17.

Acts 1975, 64th Leg., p. 788, ch. 303, § 1.  
Acts 1975, 64th Leg., p. 1312, ch. 494, § 1.  
Acts 1977, 65th Leg., p. 1875, ch. 746, § 12.  
Acts 1981, 67th Leg., p. 2897, ch. 773, § 6.  
Acts 1983, 68th Leg., p. 4154, ch. 654, § 4.  
Acts 1987, 70th Leg., ch. 873, § 13.  
Vernon's Ann.Civ.St. art. 4413(29bb), § 19(e).

**Library References**

Detectives ☞ 3.  
Westlaw Topic No. 125.  
C.J.S. Detectives §§ 1, 6 to 8.

[Sections 1702.184 to 1702.200 reserved for expansion]

## § 1702.322

### Note 1

late private security industry, and whether persons were to be included or excluded from regulation was directly related to regulatory subject matter of statute. *Garay v. State* (App. 1 Dist. 1997) 940 S.W.2d 211, rehearing overruled, petition for discretionary review refused. Statutes ⇨ 107(3); Weapons ⇨ 3

Statutes prohibiting uncommissioned private security officer from carrying firearm while performing duties unless such officer was also employed as full-time peace officer did not violate equal protection clauses of State or Federal Constitution; statutes were rationally related to legitimate state purpose of protecting public from unqualified or inexperienced officers, as part-time peace officers were generally less experienced and less trained than full-time officers. *Garay v. State* (App. 1 Dist. 1997) 940 S.W.2d 211, rehearing overruled, petition for discretionary review refused. Constitutional Law ⇨ 250.1(2); Weapons ⇨ 3

Statutes prohibiting uncommissioned private security officer from carrying firearm while performing duties unless such officer was also employed as full-time peace officer did not violate due course of law clause under State Constitution by imposing criminal penalties for obtaining employment; distinction between full-time and part-time peace officers based on level of

## LAW ENFORCEMENT & SECURITY

### Title 10

training and experience was not irrational means for obtaining legislative end of protecting public safety and welfare. *Garay v. State* (App. 1 Dist. 1997) 940 S.W.2d 211, rehearing overruled, petition for discretionary review refused. Constitutional Law ⇨ 258(3.1); Weapons ⇨ 3

Statutes prohibiting uncommissioned private security officer from carrying firearm while performing duties unless such officer was also employed as full-time peace officer was not vague as applied to defendants convicted under statute, though phrase "full-time employment" was not statutorily defined, where defendants were unpaid volunteer peace officers working between ten hours per month and 30 hours per week, and they could not have reasonably thought they were within exception provision. *Garay v. State* (App. 1 Dist. 1997) 940 S.W.2d 211, rehearing overruled, petition for discretionary review refused. Weapons ⇨ 3

### 2. In general

A city police department is not subject to licensing under chapter 1702 of the Texas Occupations Code. This exemption does not depend on whether the department is engaged in governmental or proprietary activities. Op.Atty. Gen.1999, No. JC-0114.

## § 1702.323. Security Department of Private Business

(a) Except as provided by Subsections (b), (d), and (e), this chapter does not apply to an individual employed in an employee-employer relationship exclusively and regularly by one employer in connection with the affairs of the employer.

(b) An individual described by Subsection (a) who carries a firearm in the course of employment must obtain a private security officer commission under this chapter.

(c) Although the security department of a private business that hires or employs an individual as a private security officer to possess a firearm in the course and scope of the individual's duties is required to apply for a security officer commission for the individual under this chapter, the security department of a private business is not required to apply to the commission for any license under this chapter.

(d) This chapter applies to an individual described by Subsection (a) who in the course of employment:

(1) comes into contact with the public;

(2) wears a uniform with any type of badge commonly associated with security personnel or law enforcement or a patch or apparel with "security" on the patch or apparel; or

## PRIVATE SECURITY Ch. 1702

(3) perform

(e) This chapter applies to an individual employed in the course and scope of the individual's duties in connection with the affairs of the employer if the employer is a private business that hires or employs an individual as a private security officer to possess a firearm in the course and scope of the individual's duties is required to apply for a security officer commission for the individual under this chapter, the security department of a private business is not required to apply to the commission for any license under this chapter.

Acts 1999, 76th Sess., ch. 1420, § 14.62, effective September 1, 2003.

Section 5 of Act 1999, 76th Sess., ch. 1420, § 14.62, provides:

"The changes in this Act apply only to a license issued or renewed on or after September 1, 2003. The license issued or renewed before the effective date of this Act is governed by the former law in effect on the date of the license's issuance or renewal."

### Prior Laws:

Acts 1969, 61st Sess., ch. 100, § 1, effective September 1, 1969;  
Acts 1971, 62nd Sess., ch. 100, § 1, effective September 1, 1971;  
Acts 1973, 63rd Sess., ch. 100, § 1, effective September 1, 1973;  
Acts 1975, 64th Sess., ch. 100, § 1, effective September 1, 1975.

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### In general 1

1. In general  
Registration with the Department of Public Safety for private investigators and private security officers

## § 1702.324.

(a) For the purpose of this chapter, an individual is employed in the course and scope of the individual's duties in connection with the affairs of the employer if the employer is a private business that hires or employs an individual as a private security officer to possess a firearm in the course and scope of the individual's duties is required to apply for a security officer commission for the individual under this chapter, the security department of a private business is not required to apply to the commission for any license under this chapter.

(1) acquire

(2) perform  
investigation, or disposition

(3) performs a duty described by Section 1702.222.

(e) This chapter applies to any person who conducts an investigation if the investigation involves a person, or the affairs of a person, who is not employed by the same employer as the person conducting the investigation and the investigation is not conducted on the premises of the employer. Premises of the employer include walkways, parking areas, and other areas relating to the affairs of the employer.

Acts 1999, 76th Leg., ch. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, § 14.655, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 593, § 3, eff. Sept. 1, 2003.

#### Historical and Statutory Notes

Section 5 of Acts 2003, 78th Leg., ch. 593 provides:

"The changes in law made by this Act apply only to a license, certification, registration, commission, or letter of authority that is originally issued or renewed on or after the effective date [Sept. 1, 2003] of this Act. An issuance or renewal that occurs before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose."

#### Prior Laws:

Acts 1969, 61st Leg., p. 1807, ch. 610.  
Acts 1971, 62nd Leg., p. 2835, ch. 929, §§ 1 to 23.  
Acts 1973, 63rd Leg., p. 280, ch. 130, § 1.  
Acts 1973, 63rd Leg., p. 627, ch. 266, § 17.  
Acts 1975, 64th Leg., p. 788, ch. 303, § 1.

Acts 1975, 64th Leg., p. 1312, ch. 494, § 1.  
Acts 1977, 65th Leg., p. 1871, ch. 746, § 3.  
Acts 1979, 66th Leg., p. 518, ch. 242, § 1.  
Acts 1979, 66th Leg., p. 2179, ch. 830, § 3.  
Acts 1981, 67th Leg., p. 2569, ch. 685, § 1.  
Acts 1981, 67th Leg., p. 2609, ch. 697, § 1.  
Acts 1983, 68th Leg., p. 4151, ch. 654, § 2.  
Acts 1983, 68th Leg., p. 5269, ch. 969, § 1.  
Acts 1987, 70th Leg., ch. 872, § 1.  
Acts 1987, 70th Leg., ch. 873, § 2.  
Acts 1989, 71st Leg., ch. 294, § 2.  
Acts 1991, 72nd Leg., ch. 462, § 1.  
Acts 1993, 73rd Leg., ch. 463, § 2.  
Acts 1993, 73rd Leg., ch. 870, § 2.  
Acts 1995, 74th Leg., ch. 754, § 2.  
Acts 1995, 74th Leg., ch. 790, § 2.  
Acts 1997, 75th Leg., ch. 518, § 1.  
Vernon's Ann.Civ.St. art. 4413(29bb), § 3(a), (d).

#### Library References

Detectives 3.  
Westlaw Topic No. 125.  
C.J.S. Detectives §§ 1, 6 to 8.

#### Notes of Decisions

##### In general. 1

##### In general

Registration with Texas Board of Private Investigators and Private Security Agencies is not

required for unarmed security personnel employed by individual retailers when they are employed exclusively and regularly by one employer in connection with affairs of only that employer and relationship of retailer and security personnel is that of an employer and employee. Op.Atty.Gen.1984, No. JM-222.

#### § 1702.324. Certain Occupations

(a) For the purposes of this section, "landman" means an individual who, in the course and scope of the individual's business:

- (1) acquires or manages petroleum or mineral interests; or
- (2) performs title or contract functions related to the exploration, exploitation, or disposition of petroleum or mineral interests.

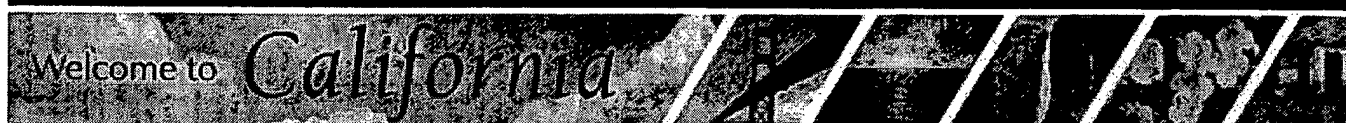
## **EXHIBIT 2**

### **A BREIF HISTORY – BUREAU OF SECURITY AND INVESTIGATIVE SERVICES**

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## A Brief History

Regulation of the private security industry began in 1915, when California enacted a licensing requirement for private investigators. The history of the industry in the United States, however, dates back nearly a century. One of its founders was Allan Pinkerton, who immigrated to this country in 1843. By 1850, he had founded the Chicago-based Pinkerton National Detective Agency, which would quickly become the industry's largest security company. Among the Agency's main customers were the railroads, which had to contend with robbers who robbed trains of cargo and passengers of personal possessions. In the mid-1800s, there were no local law enforcement authorities to chase outlaws across state and territorial lines, and local law enforcement was too poorly equipped to pursue fleeing gangs very far. Therefore, the job fell to crime victims and their hired agents. The Pinkerton work for the railroads helped build an international reputation for the company.

In addition to tracking down and apprehending criminals, the early private security industry performed duties now associated with federal and state law enforcement: guarding interstate railroad and stage shipments, investigating crimes and providing security advice to banks and other businesses that were targets of outlaws. Much of this work diminished when federal and local agencies improved their law enforcement capabilities shortly after the turn of the 20th century. However, the industry had grown considerably larger with large numbers of people working as private guards, detectives and other security-related jobs, many of which were armed. That growth was part of the reason that regulation became necessary.

## Chronology

- 1915 California moves to license and regulate private detectives under the Administration of the Board of Prison Directors.
- 1943 A new category for Private Patrol Operators is added to the Private Investigator Act.
- 1949 Repossessor agencies are added to the licensing categories under the Collection Agency Act.
- 1950 The Detective Licensing Act is renamed the Private Investigators and Adjuster Act.
- 1959 Repossessor agencies, formerly regulated under the Collection Agency Act, are transferred to the Private Investigator Act.
- 1973 The Bureau of Collections and Investigative Services is mandated to register uniformed Private Patrol Operators.
- 1974 The firearm program is established, requiring applicants for exposed weapon permits to complete Bureau-approved training.
- 1977 Alarm companies and agents are required to be licensed.
- 1981 Repossession employees are required to be licensed.

## Contact Us

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- 1986 Locksmiths are required to be registered.
- 1993 The Locksmith Act is expanded to require separate licenses for locksmith companies & employees.

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